

NEBRASKA DEPARTMENT OF NATURAL RESOURCES

TITLE 256 – REGULATIONS GOVERNING THE  
ADMINISTRATION OF THE  
RESOURCES DEVELOPMENT FUND



NEBRASKA ADMINISTRATIVE CODE  
NEBRASKA DEPARTMENT OF NATURAL RESOURCES  
TITLE 256  
RULES AND REGULATIONS GOVERNING THE  
ADMINISTRATION OF THE RESOURCES DEVELOPMENT FUND

Adopted 7-19-01



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## NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: April 21, 1999

TITLE 256 DNR – ADMINISTRATION OF THE RESOURCES DEVELOPMENT FUND

### Chapter 1 – GENERAL PROVISIONS

001 Purpose and Effect of Rules. These rules and regulations are adopted for the purpose of carrying out the provisions of the Nebraska Resources Development Fund Act. Under no circumstances shall these rules and regulations be construed as a limitation or restriction upon the exercise of any proper discretion that is vested in either the Director or the Natural Resources Commission, nor shall they in any event be construed to deprive the Director or the Commission of any exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount or character of data or information which may be required for the proper administration of the Act.

002 Definitions. As used in these rules and regulations, the terms listed below shall have the meanings noted:

002.01 Act. “Nebraska Resources Development Fund Act” or “Act” shall mean Sections 2-1586, R.R.S., 1997; 2-1587, 2-1589, 2-1590, 2-1592, 2-1593, and 2-1595, R.S. Supp., 2000; and 2-1588 and 2-1594, as amended by LB 129, 97<sup>th</sup> Nebraska Legislature, 1<sup>st</sup> Session (2001), and any and all amendments, additions, or deletions which may be made thereto;

002.02 Applicant. "Applicant" shall mean any state agency or political subdivision applying for financial assistance under the Act;

002.03 Commission. "Commission" shall mean the Nebraska Natural Resources Commission created pursuant to Section 2-1504, R.S. Supp., 2000;

002.04 Department. “Department” shall mean the Nebraska Department of Natural Resources created pursuant to Sections 61-205 and 81-101 R.S. Supp., 2000;

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002.05 Director. "Director" shall mean the Director of the Department Natural Resources as provided in Section 81-102, R.S. Supp., 2000;

002.06 Fund. "Fund" shall mean the Nebraska Resources Development Fund created by Section 2-1587, R.S.Supp., 2000;

002.07 Governing Body. "Governing Body" shall mean the individual or group of individuals which are empowered by law to govern the business of an applicant;

002.08 Intangible Benefits. "Intangible Benefits" shall mean benefits, either primary or secondary, that cannot be expressed in monetary terms;

002.09 Political Subdivision. "Political Subdivision" shall mean any political subdivision of the State of Nebraska to which has been granted the authority to develop water and related land resources, including, but not limited to a natural resources district, irrigation district, public power and irrigation district, reclamation district, county, and any municipal corporation, village, or city, whether operating under home rule charter or under the general laws of the State of Nebraska;

002.10 Primary Benefits. "Primary Benefits" shall mean net values attributable to a project of increases in products and services and of reductions in costs, damages, or losses of primary beneficiaries;

002.11 Program and/or Project. "Program and/or Project" shall mean any structural or non-structural undertaking for which assistance from the Fund is requested. Unless the context otherwise requires, no distinction is intended between such terms and they may be used interchangeably for purposes of administration of these rules and regulations;

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002.12 Project Engineer or Project Director. "Project Engineer or Project Director" shall mean any engineer, engineering firm, or other person, persons or firm retained by the sponsor to provide professional engineering or other professional or technical services during the planning, design, and construction of the project;

002.13 Secondary Benefits. "Secondary Benefits" shall mean net values to persons other than primary beneficiaries as a result of economic activity induced by or stemming from a project;

002.14 Sponsor. "Sponsor" shall mean the state agency or political subdivision primarily responsible for the development, administration, operation and maintenance of a program or project for which assistance from the Fund is requested;

002.15 State Agency. "State Agency" shall mean any agency, board, commission or other office of state government to which has been granted the authority to develop the state's water and related land resources;

002.16 Tangible Benefits. "Tangible Benefits" shall mean benefits, either primary or secondary, that can be expressed in monetary terms.

003 Types of Assistance. Eligible applicants for financial assistance from the Fund may receive such assistance in the form of grants, loans, or through the direct acquisition by the state of interests in eligible programs and projects. The form of assistance which may be allocated to a program or project shall be determined utilizing the following criteria:

003.01 Grants. Allocations from the Fund may be made as grants to applicants when it is determined that such an allocation will not be reimbursed from revenue or receipts and when the program or project, or separable portion thereof, appears to be of general public benefit thereby making reimbursement of such money from local tax funds inappropriate or impossible, or when the funds are intended for a state or local contribution to a program or

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project requiring such contribution to meet the requirements for a matching federal grant. If only a portion of the project meets the above criteria, only that portion will be eligible for a grant. In determining the appropriateness of a grant the considerations of the Director and the Commission shall include the extent of the area over which the anticipated benefits will accrue and whether equitable distribution of the costs of the program or project can be accomplished without a grant.

003.02 Loans. Allocations may be made from the Fund as loans to applicants for any program or project or any part thereof consistent with the purposes of the Act which will directly generate revenue or receipts or which can be anticipated to culminate in a program or project which will generate revenue or receipts, or which would not generate revenue or receipts but would be of general public benefit to the applicant making repayment from local tax funds appropriate.

003.03 Acquisition of State Interests. Interests in water and related land resources projects may be acquired by the Department, upon approval by the Commission, in the name of the state with moneys from the Fund when the public benefits obtained from the project or a part thereof are statewide in nature and when associated costs are determined to be more appropriately financed by other than a local organization. The Department, upon approval by the Commission, may also acquire interests in water resources projects in the name of the state to meet future demands for usable water.

003.04 Allocations to State Agencies. No grant or loan shall actually be made to state agencies for programs or projects determined to be eligible for funding unless:

003.04A The allocation is for the purpose of reserving land for a future resource development project, or;

003.04B The allocation has been approved by the Legislature by earmarking appropriations to the Fund for that purpose.

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004 Eligible Projects. Moneys from the Fund may be used to (a) participate in locally sponsored projects; (b) participate in projects sponsored or financially assisted by the federal government; and (c) finance state-sponsored projects. The types of projects and programs eligible for funding and the respective forms of such funding are as follows:

004.01 Structural Measures. Structural measures which may be eligible for allocations from the Fund in the form of grants and/or loans include measures designed for flood control; pollution abatement; fish and wildlife enhancement and preservation; outdoor recreation, irrigation development; irrigation rehabilitation; groundwater recharge; water supply for any beneficial use including domestic, agricultural, and manufacturing uses; streamflow augmentation; stream bank stabilization; and erosion and sediment control.

004.02 Non-structural Measures. Non-structural measures which may be eligible for financial assistance from the Fund in the form of grants and/or loans include: Flood damage reduction; fish and wildlife enhancement and preservation; outdoor recreation; reservation of lands for future resources development projects; and other water and related land resources programs. Projects whose primary purposes are research or data gathering shall not be eligible for assistance.

005 Interest Rate. The rate of interest payable on loans from the Fund shall be determined annually prior to October 1 of each fiscal year. Except as otherwise provided herein, such rate of interest shall be computed by averaging the yields, as determined by the "Moody's" rating and classification system, of AAA State-Local Bonds issued nationally for the three previous fiscal years and by rounding off such average to the nearest one-eighth percent. For loans for the rehabilitation or betterment of surface water irrigation projects, the Commission may reduce the rate of interest to not less than three percent if (1) the amount of the loan is \$500,000 or less; (2) the repayment period is ten years or less; (3) the project sponsor has not previously received a reduced interest loan from the Fund; and (4) the Director and the Commission determine that the proposed project will make water available for public use or will provide other public benefits. The rate of interest payable on a loan for a specific program or project shall be the rate in effect for the fiscal

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year in which the Director recommends approval of the program or project for a loan allocation. Such rate shall remain in effect throughout the repayment period determined to be appropriate for such program or project.

006 Deferred Interest. When, in the Commission's judgment, a construction or preconstruction period (not exceeding five years next following the initial allocation) is justified, no payment on the interest or principal on such loans is required during that period, but interest shall begin accruing on all loan allocations immediately with disbursement. Repayment shall commence no later than one full year following completion of project construction. Any deferred interest may be apportioned over the repayment period. The repayment period will not exceed the project life or fifty years, whichever is less.